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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,120

01/17/2007

Werner Mannschedel

BOET 22.559

1495

26304 7590 12/28/2007  
KATTEN MUCHIN ROSENMAN LLP  
575 MADISON AVENUE  
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EXAMINER

LEWIN, ALLANA

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

12/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,120	MANNSCHEDEL, WERNER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Allana Lewin	3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/13/2007 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/10/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoker (US Pat. No. 5,316,533).

Hoker discloses an exercise band comprising at least one thermoplastic elastomeric material provided by a layer of synthetic rubber (52), or material (a), and a further material that is different from the thermoplastic elastomer provided by a stretchable core layer of silicone rubber, or material (b).

Regarding claims 4 and 8, Hoker further discloses an outer layer (54) of fabric, thereby providing at least one layer having absorbent fibers, as broadly recited, as well as, absent further limitation, a reinforcement strip of material that is different from the band material, as the outer fabric layer inherently serves to reinforce the inner layers.

Regarding claims 6 and 7, the Hoker device exhibits substantially linear force characteristics due to its composition and construction, and, absent further limitation, is capable of extrusion and is therefore extrudable. Examiner notes that the process of extrusion is notoriously well known and recognized in the art for the purpose of constructing exercise bands, as evidenced by Williams (US Pat. No. 5,945,060).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoker in view of Williams.

Hoker, discussed in detail above, fails to disclose depressions or an indicator.

Williams discloses the method of making an exercise band and teaches the use of dimples (24) along the upper and lower surfaces of the band, which comprehend Applicant's depressions or channels, with the dimples serving to enhance the grippability of the band (column 7, lines 23-29), as well as the use of indicia to indicate the amount of resistance, or stretching force, provided. The use of indicia in such an application is notoriously old and well known in the art, as evidenced by Weiss (US Pat. No. 5,816,984) and Arnold (US Pat. No. 4,570,921), in order to enable the user to safely and appropriately utilize the device.

Therefore, based on the teachings of Williams, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized dimples or depressions in the Hoker device in order to facilitate better gripping of the device when positioning in it for proper use or when holding it during use, as well as to have utilized indicia that displays the amount of resistance or level of stretching force

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provided by the device in order to ensure the user is properly and safely using the device without overexerting or injuring themselves.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the list of references cite.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL   
December 24th, 2007

/Fenn C. Mathew/  
Primary Examiner  
A.U. 3764